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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment to the Commission's
Regulatory Policies Governing
Domestic Fixed Satellites and
Separate International Satellite
Systems

IB Docket No. 95-41

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COMMENTS OF PRIMOSPHERE, L.P.

Pursuant to Section 1.415 of the Commission's Rules, Primosphere Limited Partnership, hereby respectfully submits its comments on the Notice of Proposed Rule Making, FCC 95-146 (released April 25, 1995) (Notice), in this proceeding. Primosphere is an applicant for authority to construct, launch and operate a Satellite Digital Audio Radio Service (DARS) system in the 2310-2360 MHz band, and as such, has a considerable interest in this proceeding.¹

In the Notice, the Commission's proposed consolidation of rules and policies governing U.S.-licensed geostationary fixed-satellites. The Commission states that such consolidation will benefit the public by increasing competition in the provision of fixed-satellite services, by increasing the amount of capacity available for both domestic and international use, and through the elimination of regulations that might impede businesses' ability to meet their customers' needs.² Although the main focus of the Commission's Notice is on the geostationary fixed-satellite service, the Commission also asks:

¹ See Application File Nos. 29/30-DSS-LA-93 and 16/17-DSS-P-93.

² Notice, at para. 1.

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whether licensees of geostationary systems that provide mobile and broadcast services should be permitted to provide both domestic and international services on a co-primary basis, subject, of course, to U.S. international coordination obligations.³

While it may be timely for the Commission to address the issue of consolidation of its rules and policies governing U.S.-licensed geostationary fixed-satellites, Primosphere urges the Commission not to extend this proceeding to satellite DARS. Although the Commission does not explicitly address regulation of satellite DARS, Primosphere is concerned that the Commission's reference to geostationary broadcast satellite services could be construed to encompass satellite DARS. As discussed below, the licensing and service rules for satellite DARS are being developed in a separate proceeding and there are substantial public interest reasons for not applying the rules and policies developed in the instant domestic/international rulemaking to that service.

I. THE COMMISSION HAS EXTENSIVE EXPERIENCE WITH POLICIES AND RULES FOR DOMESTIC AND INTERNATIONAL GEOSTATIONARY FIXED-SATELLITE SERVICE

In the Notice, the Commission proposes consolidation of its policies and rules governing U.S.-licensed geostationary fixed-satellite systems into a single regulatory scheme. In so doing, the Commission would eliminate the distinction between its Transborder Policy and Separate International Satellite Systems ("Separate Systems") Policy, and permit all U.S.-licensed geostationary fixed-satellites to provide domestic and international services on a co-primary basis. The Commission also would consolidate its rules and licensing policies governing U.S.-licensed earth stations operating in conjunction with either domestic or international satellites. The proposed revisions would include the adoption of a

³ Notice, at para. 38.

single financial qualification standard for geostationary fixed-satellites as well as adoption of a policy permitting U.S.-licensed fixed-satellite operators to elect whether to provide service on a common carrier or non-common carrier basis.

The Commission has ample experience with domestic and international fixed-satellite service systems over the past 30 years. During this time span, the Commission has utilized policies and rules to promote implementation of satellite facilities as well as competition in the provision of domestic and international fixed-satellite service. The Commission's policies and rules evolved over the years to promote multiple entry, to provide for speedy processing and to ensure that the public interest was safeguarded. Some of the policies and rules that have been adopted in more recent years were not needed or appropriate in the early years of regulation of fixed-satellites. For example, strict financial standards were not adopted until the mid-1980s and then were adopted only to permit applications to be processed without the need to resort to time-consuming and costly comparative hearings.⁴

The Commission has not utilized strict financial qualifications for all satellite services. For international separate systems the Commission used a two-step approach and for Direct Broadcast Satellite Service a milestone approach.⁵ These rules and policies, tailored to the individual services, have achieved their objective in ensuring that satellite communications are provided competitively in the United States, to the benefit of U.S. consumers. This robust market is demonstrated by the strength of the United States commercial satellite

⁴ Licensing Space Stations in the Domestic Fixed-Satellite Services, 50 Fed. Reg. 36071 (Sept. 5, 1985).

⁵ See Direct Broadcast Satellite, 90 FCC 2d 676 (1982) and Separate Systems Decision, 101 FCC 2d 1046 (1985), recon. 61 RR2d 649 (1986), further recon., 1 FCC Rcd 439 (1986).

construction, launch and service industry.⁶

In addition to its experience with domestic fixed-satellite service, the Commission also has ample experience with Transborder and Separate Systems, which both involve the use of non-Intelsat satellites for the provision of international services. Pursuant to Executive Branch policy,⁷ the Commission has permitted U.S.-licensed domestic-fixed satellites to provide certain international services conditioned on successful coordination with Intelsat and the concurrence of other involved countries. U.S. separate international satellite systems also have been licensed and implemented, as a result of an Executive Branch determination in 1984 that such systems could be authorized, subject to certain conditions (such as a restriction on interconnection with the public switched network).⁸

The Commission's focus in this proceeding on U.S.-licensed domestic and international geostationary satellite systems is appropriate, based on its extensive experience with regulation of the fixed-satellite service and the maturity of the marketplace.

⁶ "Revenues of the commercial space industries are expected to increase to \$6.5 billion in 1994." U.S. Industrial Outlook 1994, U.S. Department of Commerce, at p. 28-1.

⁷ See Letter from James L. Buckley, Under Secretary for Security Assistance, Science and Technology, to Federal Communications Commission Chairman Mark Fowler (July 23, 1981) (printed in Appendix to Transborder Satellite Video Services, 88 FCC 2d 258, 287 (1981)).

⁸ See Letter from George P. Schultz, Secretary of State, and Malcolm Baldrige, Secretary of Commerce, to Federal Communications Commission Chairman Mark S. Fowler (Nov. 28, 1984).

II. THIS RULEMAKING SHOULD NOT ADDRESS REGULATION OF SATELLITE DIGITAL AUDIO RADIO

In contrast to the geostationary fixed-satellite service, both domestic and international, the Commission has no experience with satellite DARS. The Commission has yet to adopt licensing and technical rules for the service; in fact, the Commission only recently adopted the 2310-2360 MHz allocation for use by satellite DARS systems in the United States.⁹ In that decision the Commission stated that the spectrum allocation "is the first step toward providing the American public with new multi-channel, multi-format digital radio services with sound quality equivalent to compact disks."¹⁰ Moreover, the Commission stated that service and licensing rules for the new satellite DARS services will be addressed in a subsequent rule making. Primosphere expects a Notice of Proposed Rulemaking to be issued in the very near future concerning these licensing and service rules. This proceeding to establish satellite DARS rules should not be complicated by decisions which are made in the domestic/international proceeding.

The Commission states that consolidating domestic and international rules for geostationary broadcast satellites "appears to foster the same goals as eliminating geographic restrictions for U.S. fixed-satellites -- increased competition, increased consumer choices, and further development of the global information infrastructure."¹¹ While in the abstract this may be the case, in the case of satellite DARS, eliminating geographic restrictions would be meaningless and consolidating regulation of satellite DARS with fixed-satellite rules and

⁹ Report and Order in the Matter of Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 76 FCC Rcd 1477 (1995).

¹⁰ Supra, at para. 1.

¹¹ Id.

policies is likely to be counter-productive to the introduction of this new service.

A. Extending Provision of Satellite Digital Audio Radio Service Outside the United States Would Not Be Consistent With the International Allocation

The Commission's proposal to permit geostationary satellite systems to provide both domestic and international service, subject to appropriate coordination, could not be made applicable to satellite DARS because the U.S. satellite DARS allocation, 2310-2360 MHz, is available for such service only in the United States and India.¹² Consequently, "consolidating" domestic and international regulation for this service would be unnecessary, and in fact, futile.

For satellite communications services, the spectrum allocations provide a major determinant of geographic service availability. In the case of satellite DARS, U.S. licensees can only be licensed to provide service in the U.S. Similarly, in the case of non-U.S. systems, such as in Canada and Mexico, the allocations used by those systems (1452-1492 MHz) would preclude extension of service to the United States where the allocation for satellite DARS is different.

¹² See Final Acts of the World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum, Malaga-Torremolinos, 1992, at Radio Regulation 750B.

B. Fixed-Satellite Service Regulations Should Not Be Applied to SDARS

As discussed above, the Commission has sought to achieve certain objectives with its regulation of various satellite services. With all the services, a primary objective has been to promote the development and implementation of the service, to the benefit of the consumer. Consequently, in the early years of a service's history, the Commission generally has tried to minimize the extent of regulation, including financial qualifications requirements. Moreover, the Commission has sought to tailor these requirements to the applicants, recognizing that new services often are implemented by entrepreneurial enterprises, rather than well-established companies. The Commission has tried to not impede efforts of entrepreneurs to obtain financial backing and has recognized that many such applicants will not obtain full financing until a license has been issued. For example, in the case of geostationary domestic mobile satellite service, the Commission did not impose strict financial standards, instead requiring each of the participants in the MSS consortium to deposit \$5 million in a common fund.¹³ This approach facilitated broad participation in the U.S. domestic MSS license resulting in the launch of AMSC-I on April 7, 1995.

With regard to separate international satellite systems, the Commission has permitted applicants to make their financial showings in two stages because of the need to initiate the Intelsat XIV(D) consultation process prior to providing international service.¹⁴ For these systems, the Commission issues a conditional construction permit, with a final license issued after completion of the consultation process. Using this approach has enabled a number of separate international systems to be implemented, thereby increasing competition.

As for the geostationary broadcast satellite service, the Commission has

¹³ MSS Consortium Order, 2 FCC Rcd 485 (1987).

¹⁴ Separate Systems Decision, cited supra.

utilized a due diligence approach, requiring demonstration that various construction and implementation milestones have been met.¹⁵ Recognizing the difficulties in implementing this new service, the Commission generally has been liberal with extensions of these milestone requirements.¹⁶ This approach has enabled two systems to be implemented. Others are under construction and are expected to be implemented within the next year or two.

Satellite DARS is expected to have enormous impact on consumer welfare and is a part of a number of key actions which the Commission is undertaking to make spectrum available for innovative services which can help the U.S. maintain its technological and economic lead in the international marketplace.¹⁷ The Commission stated in its Notice of Proposed Rule Making and Further Notice of Inquiry proposing the domestic allocation of the 2310-2360 MHz band for satellite DARS that "[i]n implementing the WARC-92 DARS allocation we seek to improve the ability of U.S. industry to compete in international markets and to provide the American public with additional audio listening choices of high quality and wide geographic coverage."¹⁸

Because of the Commission's success in utilizing a variety of regulatory approaches, including those involving financial qualifications, to promote the implementation of satellite services, Primosphere believes that the Commission

¹⁵ Direct Broadcast Satellite, cited supra.

¹⁶ Cf., Advanced Communications Corporation, DA 95-944, released April 27, 1995. In this case the International Bureau refused to grant a second four-year extension for construction, launch and implementation of Advanced's DBS systems. Advanced's initial license was granted in 1984.

¹⁷ In addition to Satellite DARS, actions by the Commission to allocate spectrum for low-earth orbit satellites, personal communications services and other mobile services will greatly improve U.S. competitiveness as well as provide important services of public benefit.

¹⁸ Notice of Proposed Rule Making and Further Notice of Inquiry, GEN Docket No. 90-357, released November 6, 1992 ("Notice").

should consider the unique circumstances of the service in fashioning licensing and service rules for satellite digital audio radio. In the case of satellite DARS, this activity should be underway in the very near future.

III. CONCLUSION

For the foregoing reasons, the Commission should not apply the rulemaking consolidating domestic and international rules for geostationary fixed-satellites nor policies applicable to long-established and mature communications services to the Satellite Digital Audio Radio Service.

Respectfully submitted,

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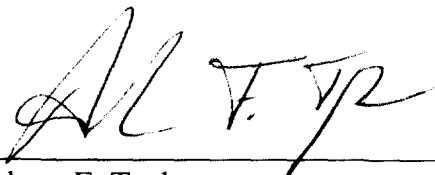
I, Andrew F. Taylor, hereby certify that on this 8th day of June, 1995, copies of the foregoing "Reply Comments of Primosphere Limit Partnership" were mailed, postage prepaid, to the following:

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